

**BEST AVAILABLE COPY****REMARKS**

Claims 1-4, 8, 12 and 14 have been rejected under 35 U.S.C. § 102 as being anticipated by Ripley. Claims 5-7, 9-11 and 13 have been rejected under 35 U.S.C. § 103 as being obvious over Ripley. Applicant respectfully traverses these rejections, and requests reconsideration of the claims, as amended.

Claim 1 has been amended to correct a grammatical error.

**Ripley Does Not Anticipate Independent Claims 1, 8 or 14**

Independent claim 1 is directed towards a method of assembling appliances, including the step of providing a plurality of base units with identical components. There is no disclosure in Ripley that the base units all have identical components. To the contrary, Ripley discloses a universal console which can have selected and optional control devices attached thereto. These control devices presumably operate various functions and parameters of the base units, which presumably have structural components corresponding to the various control devices. Thus, there is no basis to conclude that all the base units used with the Ripley control devices have identical components, as required by claim 1.

Claim 1 further provides the step of "mounting the first control console onto one of the base units to create a first model of the appliance wherein the base unit of the first model includes electrical components that are not electrically connected to the first control console." There is no suggestion in Ripley that less than all of the electrical components be connected to the controls.

For a § 102 rejection, a single reference "must disclose each and every element of a claimed invention." Tate Engineering, Inc. v. United States, 477 F.2d 1336, 1342 (Ct. Cl. 1973).

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Furthermore, each element of the claim and cited reference "must function in substantially the same way to produce substantially the same result." Id. The rejection under 35 U.S.C. § 102 is only proper "when the claimed subject matter is identically disclosed or described in the prior art." Application of Marshall, 579 F.2d 301, 304 (CCPA 1978). Prior art that is only "substantially the same as the claimed invention" likewise cannot show anticipation. Jamesbury Corp. vs. Litton Industries Products, Inc., 756 F.2d 1556, 1560 (Fed. Cir. 1995).

Applying these legal standards, it is virtually impossible for a product that is not the same type of product as the claimed invention to legally anticipate the invention. As explained by the Federal Circuit, "there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." Scripps Clinic & Research Foundation vs. Genentech, Inc., 927 F.2d 1565, 1576 (Fed. Cir 1991). (*emphasis added*). "Any degree of physical difference between the patented product and the prior art, no matter how slight, defeats the claim of anticipation." American Permahedge, Inc. v. Barcana, Inc., 857 F.Supp. 307, 317 (SDNY 1994), *affirmed*, 105 F.3d 1441 (Fed. Cir. 1997).

For anticipation, every element must be present in the prior art reference, "arranged as in the claim." Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 1236 (Fed. Cir. 1989). The identical invention must be shown in its complete detail as contained in the claim. Id.

These legal guidelines from the Federal Circuit should apply equally to a method claim. Accordingly, since Ripley fails to identically meet each and every limitation of method claim 1, claim 1 distinguishes over Ripley so as to be in proper form for allowance.

Independent claim 8 is directed towards a method of assembling an appliance, and requires the first step of "allowing a purchaser to select a control console from a plurality of consoles each having different control features for operating components in a base unit." Claim

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8 requires the second step of "then mounting the selected control console onto the base unit to create the assembled appliance." There is no disclosure in Ripley that a purchaser first select a control console and then the console be mounted on the base unit to create the assembled appliance. Applicant's review of the Ripley patent has found no reference to the purchaser or user of the appliance. Therefore, to one having ordinary skill in the art, the Ripley patent describes an appliance which is completely assembled before there is any selection by a purchaser, contrary to the requirement of claim 8 that the purchaser select a control console, which is then mounted to the base unit to create the assembled appliance. Since Ripley does not identically meet these method steps of claim 8, as required by the Federal Circuit guidelines for anticipation, claim 8 distinguishes over Ripley so as to be in proper form for allowance.

Independent apparatus claim 14 is directed to an appliance wherein the control console is mounted to the base unit and "being electrically connected to less than all of the electrical components to control the control the components". As discussed above with respect to claim 1, since Ripley presumably connects all the electrical components, and does not disclose that less than all the components should be connected, claim 14 distinguishes over Ripley so as to be in proper form for allowance.

Claims 2-7 depend from claim 1, and 9-13 depend from claim 8, and should be allowable as depending from allowable base claims.

With respect to the § 103 rejection of claims 5-7, 9-11 and 13, the Examiner asserts that it is an obvious matter of design choice to mount the console at the retail establishment, the appliance dealer, or the purchaser's home. Such a "design choice" rejection is improper and has no basis under § 103. The Court of Appeals for the Federal Circuit has clearly explained that an obviousness rejection must be based upon objective evidence of record. In re Lee, 277 F.3d

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1338, 1343 (Fed. Cir. 2002). Subjective belief and unknown authority is insufficient. Id. at 1343-44. Common knowledge or common sense is an erroneous basis upon which to assert obviousness. Id. at 1344. A rejection based upon "design choice" without a teaching or suggestion in the prior art is inherently improper. See In re Chu, 66 F.3d 292, 36 U.S.P.Q.2d 1089 (Fed. Cir. 1995).

Furthermore, the Examiner's statement in paragraph 4 of the Office Action (page 3) is inaccurate, regarding no stated problem being solved or unexpected results obtained by having a control console mounted in one place or another. To the contrary, as stated in the Background of the Invention, in the prior art, each different model typically requires a manufacturer to assemble a complete appliance, with both the base unit and the console, which necessarily requires the appliance dealer or retail establishment to carry an inventory of different models, all of which require storage space and increases the cost to the dealer or retail establishment. Furthermore, if the dealer or retail establishment does not have the model desired by the customer, undesirable delay is required for shipping the customer's model from the manufacturer to the dealer, as further described in the Background of the Invention. These problems are solved by the present invention.

**CONCLUSION**

In view of the foregoing, Applicant respectfully requests a Notice of Allowance be issued. No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

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Reconsideration and allowance is respectfully requested.

Respectfully submitted,

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